

(e) *Automatic suspension after appeal.* If on appeal to the U.S. Court of Appeals the appellee prevails, or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty (30) days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten (10) days after the expiration of such stay, unless prior thereto the judgment of the court or the final order of the Commission has been satisfied.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984, as amended at 50 FR 40332, Oct. 3, 1985; 73 FR 70275, Nov. 20, 2008]

**§ 12.408 Delegation of authority to the General Counsel.**

Pursuant to the authority granted under section 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commission hereby delegates, until such time as it orders otherwise, the following functions to the General Counsel, to be performed by him or such person or persons under his direction as he may designate from time to time:

(a) With respect to reparation proceedings conducted pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18, and subject to the Commission's Reparation Rules as set forth in part 12 of this chapter, to:

(1) Consider and decide miscellaneous procedural motions that may be directed to the Commission pursuant to part 12 of these rules after the initial decision or other order disposing of the entire proceeding has been filed;

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer (Director of the Office of Proceedings, Judgment Officer, or Administrative Law Judge) in the following situations:

(i) Where a default order or award has been made pursuant to part 12 of these rules and a motion to vacate the default or an equivalent request has been made; or

(ii) Where, in his judgment, clarification or supplementation of an initial decision or other order disposing of the

entire proceeding prior to Commission review is appropriate; and

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed.

(3) Deny applications for interlocutory review by the Commission of a ruling of an Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by § 12.309 of these rules, and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge, or Judgment Officer, or the suspension of, or failure to suspend, an attorney from participating in reparation proceedings;

(4) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge (or Judgment Officer), in a proceeding where such appeal is not filed or perfected in accordance with § 12.401, and deny any application for interlocutory review if it is not filed in accordance with § 12.309 of these rules;

(5) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, these part 12 rules; and

(6) Enter any order that, in his judgment, will facilitate or expedite Commission review of an initial decision or other order disposing of the entire proceeding.

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which he believes it appropriate, the General Counsel or his designee may submit the matter to the Commission for its consideration.

(c) Within seven (7) days after service of a ruling issued pursuant to this § 12.408, a party may file with the Commission a petition for reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984; 49 FR 17750, Apr. 25, 1984, as amended at 57 FR 20638, May 14, 1992; 59 FR 9638, Mar. 1, 1994; 64 FR 43071, Aug. 9, 1999; 78 FR 1145, Jan. 8, 2013]

## PART 13—PUBLIC RULEMAKING PROCEDURES

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AUTHORITY: Pub. L. 93-463, Sec. 101(a) (11), 88 Stat. 1391, 7 U.S.C. 4a(j), unless otherwise noted.

SOURCE: 41 FR 17537, Apr. 27, 1976, unless otherwise noted.

### § 13.1 Scope.

The rules of part 13 set forth the procedures of the Commodity Futures Trading Commission for the formulation, amendment or repeal of a rule or regulation, insofar as those procedures directly affect the public. Unless otherwise stated, the rules apply to all rulemaking by the Commission, except to the extent the rulemaking involves Commission management or personnel or public property, loans, grants, benefits or contracts.

### § 13.2 Petition for issuance, amendment, or repeal of a rule.

Any person may file a petition with the Secretariat of the Commission for the issuance, amendment or repeal of a rule of general application. The petition shall be directed to Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, and shall set forth the text of any proposed rule or amendment or shall specify the rule the repeal of which is sought. The petition shall further state the nature of the petitioner's interest and may state arguments in support of the issuance, amendment or repeal of the rule. The Secretariat shall acknowledge receipt of the petition, refer it to the Commission for such action as the Commission deems appropriate, and notify the petitioner of the action taken by the Commission. Except in affirming a prior denial or when the denial is self-explanatory, notice of a denial in whole or in part of a petition

shall be accompanied by a brief statement of the grounds of denial.

[41 FR 17537, Apr. 27, 1976, as amended at 60 FR 49335, Sept. 25, 1995]

### § 13.3 Notice of proposed rulemaking.

Whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application, there shall first be published in the FEDERAL REGISTER a notice of the proposed action. The notice shall include:

(a) A statement of the time, place and nature of the rulemaking procedures, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceedings;

(b) Reference to the authority under which the rule is proposed; and

(c) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

### § 13.4 Public participation in rulemaking.

(a) *Written comments.* Interested persons will be afforded an opportunity to participate in a rulemaking proceeding of which notice has been given pursuant to § 13.3 of these rules through the submission of statements, information, opinion, and arguments in the manner stated in the notice.

(b) *Hearings.* When required or permitted by law the Commission may hold hearings in connection with a rulemaking proceeding at which interested persons may be heard, either by oral presentation or upon written submission, and may adopt such procedures as in its judgment will best serve the purpose of the rulemaking proceeding.

### § 13.5 Exceptions to notice requirement and public participation.

(a) Notice under § 13.3 and public participation under § 13.4 shall not be required when persons subject to the rules are named and are either personally served or otherwise given actual notice of proposed rulemaking in accordance with law.

(b) Except when notice or hearing is required by statute the provisions of §§ 13.3 and 13.4 shall not apply: